

DEPARTMENT OF STATE REVENUE

04-20130524.LOF

Letter of Findings Number: 04-20130524
Use Tax
For Tax Years 2010-12

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE**I. Use Tax—Imposition.**

Authority: Guardian Automotive Trim, Inc. v. Ind. Dep't of State Revenue, 811 N.E.2d 979 (Ind. Tax Ct. 2004); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-3; IC § 6-2.5-5-1; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

Taxpayer is a manufacturer with operations in Indiana and other states. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not properly reported its sales and use taxes for the tax years 2010, 2011, and 2012. Therefore, the Department issued proposed assessments for use tax and interest for those years. Taxpayer protested the imposition of use tax on the purchase of some of the items included as taxable in the audit report. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax—Imposition.**DISCUSSION**

Taxpayer protests the imposition of use tax on its purchases of "purge materials" during the tax years 2010-12. Initially, Taxpayer had also protested its purchases of two other categories of items, but subsequently withdrew its protests on those two categories. The Department considered the purge materials to be consumed in maintenance activities and therefore subject to sales and use tax. Taxpayer protests that the purge material is not like normal maintenance materials because it is required to assure that the next parts made on the particular machines are not defective. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction.

Also of relevance is IC § 6-2.5-5-3(b), which states:

Except as provided in subsection (c), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Also, IC § 6-2.5-5-5.1(b) provides:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

The Indiana Tax Court has addressed this situation in *Guardian Automotive Trim, Inc. v. Ind. Dep't of State Revenue*, 811 N.E.2d 979, 984-85 (Ind. Tax Ct. 2004), when it stated:

The evidence in this case shows that Guardian's production process begins with the melting of the plastic pellets, and ends when the completed automotive trim parts have been packaged for shipment to Guardian's customers. See IND. ADMIN. CODE tit. 45, r. 2.2-5-8(d) (1992 & 1996) (stating that production "begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required" (emphasis added)). It is indisputable that the painting of the molded plastic parts is an integral part of Guardian's manufacture of the automotive trim parts: it is part of a continuous process by which the plastic is placed in its finished form as automotive trim components, ready for delivery to Guardian's customers. Accordingly, the masks—which are used to paint the plastic parts—are exempt. (See Trial Tr. at 83 (where the Department concedes that the masks are exempt).) In a similar vein, the process of cleaning the masks is an integral part of Guardian's manufacture of the automotive trim parts: the cleaning of the masks is done specifically for the purpose of properly applying electroplate to the parts. If Guardian did not "clean" its masks, Guardian would only be able to produce 15 to 50 marketable automotive trim components; the rest would be rejected by Guardian's customers and therefore rendered worthless. Simply put, the masks cannot be used continuously without cleaning. Thus, the mask processing equipment, essential and integral to the overall production of Guardian's automotive trim components, is exempt under Indiana Code § 6-2.5-5-3. (Emphasis added).

Finally, the court provided:

Guardian acquired equipment and chemicals for direct use in its manufacture of automotive trim parts. As a result, it is entitled to claim an exemption from sales and use taxes under both the equipment exemption and the consumption exemption. See IND.CODE ANN. §§ 6-2.5-5-3 and 6-2.5-5-5.1. Id. at 985.

In the course of the protest process, Taxpayer was able to provide sufficient documentation and analysis to establish that its purge materials serve the same function as the cleaning materials used in Guardian. Therefore, as provided by the tax court in *Guardian*, the purge materials are an integral part of Taxpayer's continuous production process and so are exempt under IC § 6-2.5-5-3 and IC § 6-2.5-5-5.1. With regards to the purge materials, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained, as provided above.

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